

**Testimony of Michael G. Baker before the
Senate Environment and Public Works Committee
May 6, 2008**

Background

Good morning Madam Chairman and Committee Members. I am Michael Baker, Chief of the Division of Drinking and Ground Waters within the Ohio Environmental Protection Agency. I am also President-Elect of the Association of State Drinking Water Administrators (ASDWA). ASDWA supports and represents the collective interests of the states, territories, and the Navajo Nation in their administration of national drinking water program requirements within their states or territories. We applaud the Committee for taking up these important issues related to providing safe drinking water and are pleased to be here today to offer testimony.

States and territories are responsible for carrying out the Safe Drinking Water Act and the subsequent regulations and programs enacted to help safeguard the quality of America's drinking water. States and territories work with a number of partners to protect drinking water quality from source to tap at over 160,000 public water systems throughout the country. Our approach includes preventing pollution of sources of drinking water; administering over 90 federal contaminant regulations; and providing training, technical assistance and funding to owners and operators of public water systems. States also often implement additional state requirements, beyond the Federal minimums. The first and overarching priority of state or territorial drinking water programs is the protection of the public health of their citizens.

Support for Construct of Safe Drinking Water Act

With that brief background about who we are, what we do, and why we do it, please allow me to turn to the subject of this morning's hearing. Overall, we support the fundamental construct of the Safe Drinking Water Act as it relates to determining which contaminants are to be regulated, how those regulations will be developed, and how existing regulations are to be reviewed and periodically revised. An underlying tenant of the Act, we believe, is that environmental and public health standard-setting and review should be driven by sound science. By "sound science", we mean robust data on the occurrence of contaminants of concern in sources of drinking water; information about the ability of these contaminants to cause adverse human health effects; information about technologies and costs to remove or reduce these contaminants, and the expected benefits of doing so.

We specifically support provisions of the Act that require EPA to develop a Contaminant Candidate List and determine which contaminants on the list, if regulated, would constitute a "meaningful opportunity for health risk reduction." We also believe that, as knowledge and information change over time, existing drinking water rules should be revised, as appropriate, in order take such new information into account.

Concerns about Alternative Approaches to the SDWA

We appreciate the Committee's concerns about the contaminants being discussed today – perchlorate and TCE. We are acutely aware that these contaminants present challenges for many states, as well as for water systems and their customers. However, as a general matter, we believe the science-based decision-making processes of the Act should be allowed to function as envisioned. We are concerned about the precedent of using legislative action that supercedes the provisions of the statute for particular contaminants and contaminant categories.

There appear to be an increasing number of contaminants threatening the safety of drinking water; highlighting the need for a rational, scientific approach to determining what should be regulated and at what levels. Recent media stories about pharmaceuticals and personal care products in our surface and ground waters -- and, in some cases, in drinking water -- are just one example. In my own state of Ohio and in a number of other states, we are grappling with a different type of emerging contaminant -- "PFOA"; one of many flouropolymers used in a variety of manufacturing processes for decades to create products like non-stick cookware. This compound is being detected in the environment, animals, and people around the world. Customers of an Ohio public water system contaminated by PFOA have the highest blood levels of the chemical ever detected. Clearly, we are concerned about any of these chemicals being in our sources of drinking water.

We also expect to see more and more "emerging contaminants" in the future. We live in a society that produces and uses a myriad of chemicals. That fact, coupled with our ever increasing ability to detect and quantify contaminants, will undoubtedly educate us about new risks to the safety of drinking water. Unless a balanced, rational, and transparent approach is used, we're concerned that EPA will jump from one contaminant to another -- based on media and political attention -- rather than on the potential for meaningful public health gains.

Timeliness is Key: Recommendations for EPA from State Drinking Water Programs

While I've shared our concerns about the risks of an alternative process to contaminant regulation, states do agree that EPA needs to make timely decisions on contaminants of concern.

Most states do not have the resources or expertise to independently develop drinking water regulations and therefore look to EPA to conduct the necessary research and collect the data and information needed to make regulatory decisions. However, as my colleagues on this panel from other states have (or will) describe, in the absence of timely EPA decisions about contaminants of concern, some states can and do establish their own regulatory levels.

Public health protection depends on both sound and timely decisions. So, what is *timely* action on the Agency's part? In the case of perchlorate and TCE, EPA should be held

accountable for describing the data and information available; indicating what, if anything, is lacking to support regulatory decisions; and providing estimates of the time frames needed to finish gathering and analyzing this information. We urge EPA to gather the needed data and information as expeditiously as possible and to make decisions about whether or not to regulate (in the case of perchlorate) and whether or not to revise (in the case of TCE) as rapidly as possible. This same need applies to a number of other emerging contaminants. Resources for identifying and researching the health implications of emerging contaminants such as endocrine disrupters and fluoropolymers, for example, are critical.

Importance of Source Water Protection

The topic of “emerging contaminants” also points to a strategy we must increasingly employ in tandem with the regulatory track we’ve discussed thus far: namely, *source water protection*. In most cases, it’s far more effective, cheaper, and protective to *prevent* contaminants from reaching sources of drinking water, in the first instance, than to identify and treat them. Key elements of a preventative approach include appropriate controls on point and non-point sources of pollution, together with wise land use decisions and “smart growth” approaches to development. There is a critical link between the protections afforded under the Clean Water Act and source water protection needed to fully achieve the goals of the Safe Drinking Water Act.

Suggestions for Congress

All of us – at the federal, state, and local levels – have important roles to play. Today’s discussions underscore the need for us to stay ahead in our efforts to ensure that the American people continue to have access to water that is among the safest in the world. For Congress, an important role is to ensure adequate funding to support research and analysis so that supporting information about these complex contaminants is available when needed.

I must also note that while we support the need for new regulations to address contaminants of concern – these regulations come with a cost burden to state drinking water programs and public water systems. Many states and water utilities, especially small systems, are already struggling to meet the demands of regulations adopted since the Safe Drinking Water Act was reauthorized in 1996. We need your continued financial support of drinking water programs. We appreciate Congress’ support of the Drinking Water State Revolving Loan Fund – which remains an important source of funds for thousands of drinking water systems to build new and address aging infrastructure needs. But, we respectfully recommend that more funds be appropriated in future years to help fill the large and growing infrastructure gap.

Our discussions today also highlight the need for additional federal dollars for state drinking water programs through Public Water System Supply and Supervision Grants. Current funding levels, which have remained roughly \$2 million, on average, per state,

per year for the last decade, are simply inadequate for the task at hand and should be substantially increased.

Thank you for this opportunity to offer testimony. I would be pleased to answer any questions you may have.